

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1407

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Appellee,

-v-

RONALD BELL,

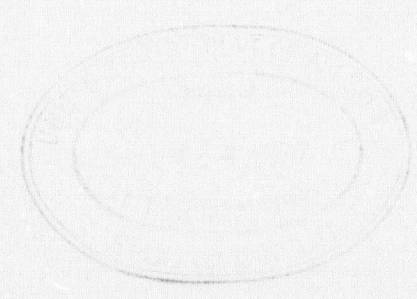
Defendant-Appellant.

-----X
On Appeal from the United States District Court
for the Eastern District of New York

-----X
APPENDIX TO APPELLANT'S BRIEF
-----X

Harold L. Levy, Esq.
Attorney for Appellant
32 Court St.-Suite 802
Brooklyn, New York 11201
237-1900

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P/S



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY GRAHAM and
ROBERT HAIRSTON,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of January 1976
and the 31st day of May 1976, both dates being approximate
and inclusive, within the Eastern District of New York and
elsewhere, the defendants

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY GRAHAM and
ROBERT HAIRSTON,

did knowingly and wilfully conspire to commit offenses in
violation of Title 18, United States Code, Sections 2113(a)
and (d), by conspiring to rob by force, violence and
intimidation, a series of banks, within the Eastern District
of New York and elsewhere the deposits of which banks were
insured by the Federal Deposit Insurance Corporation.

In furtherance of said conspiracy and to achieve
the objectives thereof, the defendants

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY C. KING and
ROBERT HAIRSTON

committed the following

Brammell, J.

INDICTMENT

Cr. No. 77 CR 157
(T. 18, U.S.C., 5371,
§2113(a), §2113(d) and
§2)

Conspiracy 5 years

OVERT ACTS

1. In or about the later part of January 1976, within the Eastern District of New York, the defendants, CHARLES WILLIAMS, ROBERT MCGRAY aka "Sabu" and CURTIS KING had a series of meetings during which they discussed and rehearsed robbing banks.

2. On or about February 9, 1976, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM robbed the European-American Bank, located on Brush Hollow Road in Westbury, New York.

3. On or about March 11, 1976, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING and ROBERT HAIRSTON robbed the Kilbourne State Bank, located at 6055 West Lisbon Avenue, in Milwaukee, Wisconsin. *§ 701*

4. On or about May 6, 1976 the defendants, CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING robbed the Nassau Savings and Loan Association located at 77 Lincoln Avenue in Rockville Centre, New York. (Title 18, United States Code, Section 371.)

COUNT TWO

On or about the 9th day of February, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM, did knowingly and wilfully by force, violence and intimidation, take from the person and presence of the employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care,

custody, control, management and possession of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2).

COUNT THREE

On or about the 9th day of February, 1976, within the Eastern District of New York, the defendants, CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM, did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of this act and offense, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

COUNT FOUR

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING did knowingly and wilfully, by force violence and intimidation take from the person and presence of the employees of the

Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty Three Dollars (\$24,053) in United States currency, which money was in the care, custody, management and possession of said bank, the deposits of which were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18, United States Code, Sections 2113(a) and 2).

COUNT FIVE

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty-Three Dollars (\$24,053) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Insurance Corporation, and in the commission of this act and offense the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", and CURTIS KING did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

A TRUE BILL


DAVID G. NATHAN
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

FOREMAN

AL DOCKET - U.S. District Court

JUDGE/MAGISTRATE Assigned 0721	U.S. vs. 77CR 157	Case Filed Mo. 3 Day 22	BRAMWELL, J.
297 1 District Office	ROBERT McGRAY (LAST, FIRST, MIDDLE)	GARY GRAHAM JUVENILE	MICHAEL, J.

U.S. TITLE/SECTION: **18:371, 2113(a)(d) and 2**
 OFFENSES CHARGED: **Did conspire to rob a series of 5 banks and use of a dangerous weapon**
 ORIGINAL COUNTS: **5**

U.S. MAG. CASE NO.	FILED
☐ Denied	☐ Fugitive
☐ Ser.	☐ Pers. Recog.
☐ \$	☐ PSA
☐ Date	☐ conditions
☐ Bail Not Made	☐ 10% Deposit
☐ Status Changed (See check)	☐ Surety Bond
	☐ Collateral
	☐ 1st Pny Cust
	☐ Other

DATES & INTERVALS

REST	INDICTMENT ☒	ARRAIGNMENT	TRIAL
Detention Begin	High Risk Date	Information	
Detention Served	Indict. Waived	Superseding Indictment	
Appearance	In Charging District	Final Plea	
		4/3/77	6/6/77
		7/5/77	7/24/77
			9.16.77

Issued Return Issued Served Warrant Issued WARRANT FENSE Complaint	DATE	INITIAL/NO	INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT	INITIAL NO	OUTCOME
					☐ DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Borney or Asst

ATTORNEYS

achary Carter

- Randolph Jackson - Richard Rosenkranz
 66 Court St., Bklyn, NY
 109-Montague-St., Bklyn, NY-11201
 853-EXMAR-2890 TR 5-9440

WILLIAMS 1; McGRAY 2; KING 3; BELL 4; HAIRSTON 6

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
2-77		Before CATOGGIO, J - Indictment filed ordered sealed by the court - bench warrant ordered/Issued.	
3-77		Before Bramwell, J - case called - deft produced in court on a bench warrant - Indictment ordered opened by the court. Deft present without counsel - court assigns Randolph Jackson as counsel - deft arraigned and enters a plea of not guilty - bail fixed at \$100,000 surety bodd. May 20, 1977 for motions and case set down for trial on June 6, 1977. Bench warrant retd and filed - executed.	
13-77		By Bramwell, J - Order appointing counsel filed	
1/77		Before Bramwell, J-case called-deft & counsel present-court relieves Mr Randolph Jackson as counsel for deft. case adjd to 5/16/77 for all purposes.JLJ	
6.77		Before Bramwell, J.- Case Called. Deft. present. Counsel not present. Court assigns Richard I. Rosenkranz as Counsel for the Deft. Motions by 5.27.77 and Case adjd. to 6.6.77 for Trial at 10:00 A.M. Bail continued.	

GP

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUDABLE DELAY		
DATE	(DOCUMENT NO.)	Interval Section 3 (a)	Start Date End Date (b)	Excl. Code (c)	Total Days (d)	
5.16.77	By Bramwell, J. Order appointing Counsel filed.					GP
5-19-77	Motion for severance and dismissal and Memorandum of Law filed in support of motion.					
5/27/77	Before Bramwell, J.-case called-defts motion forseverance adjd to 6/3/77/jlj					
6-2-77 k	Memorandum of Law in opposition to defts motions for severance, dismissal of count one, and suppression of defts written statement filed (forwarded to Chambers)					
6.03.77	Before Bramwell, J.- Case Called. Deft's. Motion for Severance and dismissal etc. Motion argued. Motion denied. Settle order on Notice.					GP
6-6-77	Before Bramwell, J - case called - deft & atty Richard Rosenkranz present - case adjd to June 20, 1977 at 10 am for trial.					
6-20-77	Before Bramwell, J - case called - deft & counsel present - hearing on motion to suppress begun - decision reserved - case adjd to June 21, 1977 at 2 PM.					
6-21-77	By Bramwell, J - Writ issued					
6.21.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing on motion to suppress resumed. Decision reserved. Hearing continued to 6.22.77 at 10:45 A.M.					GP
6-22-77	Before Bramwell, J - case called - deft & atty present - hearing contd - decision reserved on all motions - hearing contd to June 23, 1977.					
6.23.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing on motion to suppress continued. Deft. sums up. Govt. sums up. Motion to suppress is denied in all respect. Case is severed. Case adjd. to 6.27.77 at 10:00 A.M. for Trial. Hearing concluded.					GP
6-27-77	Before Bramwell, J - case called - deft & counsel present - Case as to deft marked ready and passed on 24 hours notice.					
7-20-77	Before Bramwell, J - case called - deft & atty present - Defts motion to produce Mrs. King as a witness, etc, motion denied - case adjd to July 27 at 2 PM for all purposes.					
7-25-77	Before Bramwell, J - case called - deft present with atty - trial ordered and begun - Jurors selected and sworn - suppression and for severance is denied - trial contd to 7-26-77.					
7-26-77	Before Bramwell, J -a case called - deft & atty present - trial resumed - trial contd to 7-27-77.					
7.26.77	Stenographer's Transcript dated June 20th, 1977 filed.					GP
7.26.77	Stenographer's Transcript dated June 22nd, 1977 filed.					GP
7.26.77	Stenographer's Transcript dated June 23rd, 1977 filed.					GP
7-27-77	Before Bramwell, J - case called - deft & counsel present - trial resumed - trial contd to 7-28-77. Motions at the end of Govts case for mistrial/argued and denied or acquittal - end of					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER	

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

GARY GRAHAM

77

157

5

Yr.

Docket No.

Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7/28/77	(Document No.) Before Mishler, Ch J-case called-deft present with counsel-trial resumed-both sides rests-motion by def for a judgment of acquittal is denied-at 4:10 the jury retired for deliberation-at 6:25 the jury returned and asked to suspend for the day and to return tomorrow-trial contd to 7/29/77 for further deliberation.jlj				
7/28/77	By Mishler, Ch J-Order of sustenance filed.jlj				
7-29-77	Before Mishler, Ch J - case called - def present with counsel - trial resumed - Jury retired for deliberations at 9:35 am - Jury returned with a verdict of guilty on count 1 as to this def and not guilty on counts 1 and 3 - Jury polled & discharged - sentence adjd without date - Bail set at \$25,000 PRB with a cash deposit of \$1,500 and the wife and father to sign as surety for this def. all motions reserve to time of sentencing - sentence adjd without date.				
7/29/77	By Bramwell, J Order dtd 7/1/77 filed re findings of fact and conclusions of law and order.jlj				
8-1-77 k	Transcript filed dated July 25 1977.				
8-10-77	By CHREIN J - Order for acceptance of cash bail filed.				GP
8.19.77	Stenographer's Transcript dated July 26th, 1977 filed.				
8-25-77	2 transcripts filed dated July 28, 1977 and July 29, 1977., respectively.				
9-9-77	Notice of motion and Memo of law in support of motion for setting aside jury verdict pursuant to Rule 33, etc. (forwarded to Chambers)				
9/16/77	Before Mishler, Ch J-case called-motion for order setting aside verdict argued-motion denied-and is so ordered.jj				
9.16.77	Before Mishler, J.- Case Called. Def. & Counsel present. Imposition of sentence is suspended and the defendant is placed on probation for a period of five (5) years on Count one (1). Clerk to file notice of appeal without fee. Bail is exonerated.				GP
9.16.77	Judgment and Order of Probation filed. Certified copies to Probation.				GP
9.16.77	Notice of Appeal filed.				
9.16.77	Duplicate Copy of Notice of Appeal together with Certified Copies of Docket entries mailed to the Court of Appeals with Form A.				GP
9.20.77	By Mishler, J.- Order Releasing Bail filed.				GP
9.23.77	Voucher for Compensation for Counsel recd. and forwarded to the Court of Appeals for authorization. (V# 244017)				GP
9-29-77	By MISHLER, CH, J-Voucher for compensation for appointment of counsel filed. Copy to AO. MG				
10-17-77	Two (2) transcripts filed, one dated July 25, 1977 and one dated July 27, 1977 respectively.				
10-17-77	Scheduling order filed that the record on appeal be docketed on or before Oct. 17, 1977.				

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

CRIMINAL DOCKET		PROCEEDINGS (continued)		V. EXCLUDABLE DELAY	
DATE	(Document No.)	(a)	(b)	(c)	(d)
10-17-77	Sten. transcripts dtd 6-22-77, 6-23-77 and 6-27-77.	mg			
10-17-77	Entire file certified and mailed to C of A.	mg			
10-20-77	Crim. appeal scheduling order ret 10-17-77 filed.	mg			
10-26-77	Sten. transcript dtd 9-16-77 filed.	mg			
10-27-77	Acknowledgment filed recvd from the c of a for receipt of record on appeal.				
11-8-77	By MISHLER, C. S. Jr., xxx withdrawal of appeal filed xxx Copy mailed xxx C of A xxx mg				

Interval
(per Section II)

Start Date _____
End Date _____

AO 256A

Interval
(per Section 11)

Start Date _____
End Date _____

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Co

SS#2pm
fw
fg NI

(... enters the jury box.)

THE COURT: Madam Foreman and Ladies and
Gentlemen of the Jury:

Before I begin my main charge, I'll advise
you that Mr. Rosenkranz says that Mr. Carter mis-
stated his position with reference to Special
Agent Mahaffey's intention and purpose when he
obtained statements from Mr. Graham on April 13th,
1977. Mr. Carter says he did not.

You heard them both, and I'm sure that you
can decide on your own whether or not the position
was misstated.

The important thing is that you understand
the defendant's position in the matter.

As I will tell you again later, summation is
really each lawyer's version of what the evidence is,
and lawyers see it differently. Someone said, "Where
I stand depends on where I sit," and that's true of
lawyers in the case as well as people in other
positions.

Now, having gotten off the track, let me
see if I can get back on. The case is United States
of America against Ronald Bell and Gary Graham.
When I give my charge, whether I say "accused" in

Charge of the Court

the singular or plural, or "defendant" or "defendants," I mean both unless I specifically refer to one of the defendants by name.

You're trying two cases here, rather, four or six cases. It's as if you were trying the defendant Ronald Bell separately and the defendant Gary Graham separately on the three charges.

As I indicated originally--and I'll read the indictment to you--the first charge is conspiracy. To get your thinking straight, there's a difference between a conspiracy charge and what we call substantive charges. The conspiracy charge is the agreement to violate the law, while the substantive charge is the actual commission of the alleged crime. As you may learn, that distinction is rather confused by another charge of aiding and abetting, and just so I don't confuse you any further, I would rather not go into the differences until I reach that charge on what the crimes charged really mean.

I think it's important that we all understand the role of every participant in a jury trial. There are really three main areas of participation. One is the lawyers. The lawyers are adversaries, I told you that before, Mr. Levy and Mr. Rosenkrantz

Charge of the Court

representing Mr. Bell and Mr. Graham respectively, take one position on an issue, and we talk about issues of fact, what happened.

The critical issues here--and there are others, but the critical issues are the identity of the perpetrators of the bank robbery on February 9th, 1976, of the European American Bank out at Brush Hollow Road in Westbury, and the issue of the voluntariness of the statements made by the defendants, Mr. Graham on April 13th, 1977, and by Mr. Bell on April 19th, 1977.

As you readily recognize, the Government charges that Mr. Graham and Mr. Bell, indeed, were two of the five bank robbers, and the defendants deny that and say that the Government failed to prove that beyond a reasonable doubt, and on the issue of voluntariness, the Government says that the confessions were knowingly, freely, voluntarily and intentionally made, and the defendants, of course, deny that. That's expected in every adversary proceeding where the lawyers take opposite positions on an issue. If they're in agreement there wouldn't be a trial. That's what they're doing, they're trying those issues and others.

Charge of the Court

4 1
2 The theory is that if lawyers of comparability
3 litigate over a contested issue, they will develop
4 the evidence during the trial and that's what they've
5 been doing.

6 The lawyers here are representatives of the
7 bar in the finest tradition. I think all of them
8 have done an excellent job in representing their
9 clients. They're protagonists, they're partial,
10 Mr. Carter, on behalf of the Government, Mr. Levy on
11 behalf of Mr. Bell, and Mr. Rosenkranz on behalf
12 of Mr. Graham, and that's as it should be, because
13 the theory works best when the lawyers do have the
14 understanding and the zeal to adequately represent
15 their respective positions. That's one area of
16 participation, and you can understand the contribu-
17 tion it makes in a jury trial.

18 On the other hand, we have the Court and the
19 jury, the two other participants in the trial.
20 There's a distinct difference in function and
21 authority between the court and jury and the lawyers.
22 The court and jury are impartial, objective. Both
23 are judges.

24 As between the jury and the court, there is
25 a clear line of demarcation, in both authority and

1
2 in function. The jury is the sole judge of the
3 facts. You and you alone will decide whether the
4 Government proved that the defendants were indeed --
5 when I say "defendants," you're not to lump them
6 together. You're to decide each one separately --
7 whether the accused was a participant in the bank
8 robbery, and whether Mr. Graham knowingly and volun-
9 tarily executed and signed the statement, and whether
10 or not the defendant Bell executed and signed the
11 statement, and whether as to both, the statement
12 was knowingly and voluntarily and intentionally made.
13 That's what we mean by the fact questions, those
14 among others. I'll tell you what the others are
15 shortly.

16 Just as the jury is the sole judge of the
17 facts, the judge is the sole judge of the law. As
18 I accept your fact-findings and your verdict of
19 guilty or not guilty as to each count in the indict-
20 ment as to the accused, so you must accept the charge
21 of the court. You may not agree with some of the
22 principles or you may not agree with any of the
23 principles, You may think the principles of law
24 are unwise. You may believe that you could have
25 done a better job. But you have an obligation of

Charge of the Court

accepting the law as I charge it without question.

If each one of us understands the role we play and the limit of our authority and recognizes the authority of the other participants in the trial, it will make for a long step toward a fair trial. After all, that's what we're talking about.

You've heard me and the lawyers talk about the presumption of innocence, and now, turning to the charge as I have it, I realize that something went wrong. Let's see if I can straighten it out. I don't know why I think of it at this time, but I remember when I was in law school and I remember it so clearly. I was taking a course in wills. This professor just read in flat tones the lecture of the day and he never varied one word from his written lecture, and one day one of the students decided to mix up the pages, and I remember his face when it happened, and I remember the threat he made, too, that he was going to flunk everyone, but I just hurriedly took these pages that were on my desk and before I continue, I'll have to straighten them out, because I want it to go in a certain sequence, or else there will be utter confusion.

You're excused for a moment until I straighten

Charge of the Court

my papers out.

(The jury leaves the courtroom.)

THE COURT: That incident actually happened. What happened here is that I was doing other work and I just took hold of the papers and my girl said, because I dictated some material to her, she said, "Judge, did you go over the charge?"

I said, "I don't have to do that. I can editorialize as I go on." But it's without form, and that's what I'm concerned about. I want to make sure I do not leave out--

MR. ROSENKRANZ: Don't worry, Judge, we won't tell anybody about this.

THE COURT: Oh, I think it's quite humorous, and I don't mind. I see some of the pages referred to what I dictated and I must find the rest of it. I'll have to put it in order or else I might miss something.

(Recess)

THE COURT: Seat the jury, please.

(The jury enters the jury box.)

THE COURT: In our system of jurisprudence, every defendant charged with a crime is presumed to be innocent. It's a strong presumption, time-

Charge of the Court

honored in Anglo-American jurisprudence. It means that at the outset of the trial you must conclude that the accused is innocent of all the crimes charged in the indictment. That presumption holds throughout the trial and throughout your deliberations, and is enough to acquit a defendant. It submits or gives way only if the Government proves guilt beyond a reasonable doubt.

I like to analogize it to what we call a Scotch verdict. In Scotland there are three verdicts: guilty, not guilty, and not proved. In this country we have only two verdicts: guilty and not guilty, and not guilty includes not proved.

What is a reasonable doubt?

A reasonable doubt is the kind of doubt a reasonable person would have after reviewing all the evidence in the case. It's a doubt based on reason and common sense as distinguished from some emotional doubt. It's not a vague, speculative or imaginary doubt. It's a doubt that would cause a reasonable person to hesitate to act in the most important of his or her own affairs.

Proof beyond a reasonable doubt is therefore proof of such a convincing character that you would be willing

Charge of the Court

to rely and act upon it unhesitatingly in the most important of your own affairs.

The Government's burden is not to prove guilt beyond all doubt. It has a qualifying adjective, and that's reasonable doubt. There's a qualifying adjective. The Government's burden is not to prove that every bit of evidence that was offered during the trial is true beyond a reasonable doubt. The Government's burden is to prove all the essential elements of the crime charged beyond a reasonable doubt, and later on in the charge I'll list the essential elements of each crime charged.

The defendants are not obligated to offer any proof. The defendant, the accused, has the right to rely on the failure of the Government to prove guilt beyond a reasonable doubt.

In this case the defendants did offer proof through their own testimony. Proof beyond a reasonable doubt does not depend upon the number of witnesses the Government calls nor the number of exhibits that are offered in evidence. You will evaluate the testimony and determine whether the Government proved guilt beyond a reasonable doubt based on the quality of the evidence offered.

Charge of the Court

Evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witnesses. It includes the direct, cross-examination, redirect and recross. It includes the exhibits that are received in evidence. It includes facts which are stipulated or admitted and includes facts of which the Court took judicial notice.

As I indicated, I judicially noticed February 9th, 1976, and as you see, I just referred to a calendar to make sure, and that's the type of fact that is usually judicially noticed, February 6th, 1976, was a Friday.

MR. CARTER: February 9th.

THE COURT: I'm sorry, February 9th. This robbery took place February 9th, February 9th, 1976, which was a Monday. It's also true that February 6th, 1976, is a Friday.

I think it's important for the jury to know what is not evidence, what you may not consider as evidence.

The statements made by counsel, both in the opening and summation or closing arguments are not evidence. They serve a purpose, as I indicated to you before. The opening statements are designed to

Charge of the Court

11 1
2 alert the jury to the evidence that's to come, so
3 that you may more easily understand it and under-
4 stand the sequence of events. Evidence doesn't
5 always come in either logically or chronologically.
6 Sometimes, as you recall, one witness testified to
7 an event that occurred at one time, and the next
8 witness might have testified to an event that
9 occurred at a previous date, so that the opening
10 statement is designed to aid the jury in following
11 the evidence that's to come.

12 The closing argument, on the other hand,
13 is to, first, focus attention on what the lawyers
14 think is the significant evidence in the case and
15 to make arguments on behalf of the defendant of
16 exculpability, which means arguments tending to
17 convince you that the Government failed to prove
18 guilt beyond a reasonable doubt, and, on the other
19 hand, arguments made by Mr. Carter attempting to show
20 inculpability, which means the Government proved
21 guilt beyond a reasonable doubt.

22 You obviously can't accept both arguments,
23 so the closing arguments are intended to, again,
24 help you arrive at the truth by presenting theories
25 on both sides.

Statements made by the court are not evidence in the case. I don't know that I made any statements, but if I did, I wasn't subject to cross-examination as one of the witness. It wasn't intended to be introduced as evidence, and it just was not evidence.

I should make reference to the occasional questions that the court asked. You shouldn't attach any special significance to it. The only reason I asked them is because at times I thought that there might have been a little confusion or a little uncertainty in the testimony, and it was asked with the expectation or hope that it would clear up any confusion and only for that purpose. I certainly didn't intend to convey to the jury how I felt about the case. I have no feeling about this case. That's your business and yours alone. I'm only interested in seeing that the parties and that means both sides--receive a fair trial.

At times I sustained objections to questions and if the witness had answered, I directed that the answer be stricken. Just as I directed the court reporter to strike it from his notes, so I direct you to figuratively strike it from your mind, and certainly from your consideration.

Charge of the Court

Where an objection was sustained to a question, you can't speculate on what the answer might have been had the witness been permitted to answer, the theory being, or the law being, that since it isn't in the record you cannot consider it.

The same is true of statements incorporated by lawyers in questions they asked. It's a technique and designed to elicit the truth or disclose the lie. The point is that if the witness did not agree, that the fact was so as suggested by the examiner, and if there's no evidence in the record to support it, you cannot assume that there's any truth to that fact.

The point is, it's not in the record. It was not accepted by the witness, so you may not assume that it's so where the record does not disclose any support for it.

Evidence is the method through which a disputed fact is proved or disproved. There are two general classifications of evidence. One is direct evidence, which means the testimony concerning a disputed fact as to what a witness saw or heard. The other class is circumstantial or indirect evidence.

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Charge of the Court

Circumstantial or indirect evidence is proof of a disputed fact by the jury drawing an inference from the establishment of circumstances from which the inference may reasonably be drawn. The example I've given many times, and I'll repeat, I think demonstrates what we mean by the difference between direct and circumstantial evidence.

If you were sitting here as a juror in a personal injury action, and in the hypothetical we'll assume that Mrs. A was suing Mr. B for personal injuries, claiming that on a certain day and a particular place where there was a stop sign, the defendant B failed to stop at the stop sign and struck Mrs. A.

If Mr. Adler, my courtroom deputy and myself were standing on that corner, if I had my back to the roadway and back to the sign, and he had his face toward the sign, and the roadway, he would be in a position to give direct testimony on that issue.

It's important to the area that's contested, that's in question.

If he were called to the stand to testify, he might say, "I saw Mr. B through the corner of my eye coming down the roadway in a 1977 white Cadillac,

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Charge of the Court

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and I saw him pass the stop sign without stopping
and strike Mrs. A." That's direct testimony on that.

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If I were called to testify, I couldn't give
direct testimony on that particular issue, but
I would be in a position to testify as to circum-
stances from which the jury might establish, based
on good common sense and experience, that that
motor vehicle passed the stop sign without stopping.

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I might testify that while I spoke with
Mr. Adler I turned my head to the right and I saw
a 1977 Cadillac travel down the roadway at about
sixty-five miles an hour, it passed behind me, and
about two or three seconds later, about one hundred
fifty feet later, I turned to my left and there
was this same Cadillac driven by Mr. B, traveling
at the same rate of speed, and then it struck Mrs. A.

From those established facts, if you credited
my testimony, you would know that the motor vehicle
traversed about one hundred fifty feet in two or
three seconds. I think your good common sense and
experience would almost compel the inference,
though inferences aren't usually compelled, because
it's discretionary, but based on your good common
sense and experience, you would come to the conclusion

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2 that that motor vehicle passed the stop sign with-
3 out stopping.

4 There you have two forms of evidence, proving
5 the same fact, one direct evidence, one circumstan-
6 tial evidence.

7 The law does not hold that one form of evi-
8 dence is of better quality than the other. At
9 times direct evidence is of better quality. At
10 times circumstantial evidence is of better quality.
11 The law requires that both on direct evidence and on
12 the circumstantial evidence the Government prove
13 all the essential elements of the crime charged.

14 You, the jurors, are the sole judges of the
15 credibility of the witnesses, which means the
16 believability of the testimony and the weight
17 their testimony deserves.

18 Scrutinize the testimony given and the cir-
19 cumstances under which each witness testified and
20 every matter in evidence which tends to support or
21 contradict the testimony given.

22 Consider each witness's intelligence. Con-
23 sider each witness's motive and state of mind. Why
24 is the witness testifying?

25 On the one hand, we have the defendants. Why

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2 are the defendants testifying in the manner in which
3 they are?

4 On the other hand, we have the FBI agents
5 who are working on the case and have some kind of
6 an interest in successful prosecution.

7 Determine, if you can, what the witnesses
8 are thinking of as they answer. Take into consider-
9 ation the demeanor and manner while on the witness
10 stand. Are the witnesses answering fully? Are they
11 avoiding a complete answer?

12 Take into consideration the witness's own
13 ability to observe the matters as to which he or
14 she has been called upon to testify, whether he or
15 she has impressed you as having an accurate recollec-
16 tion as to those matters.

17 Take into consideration the relationship
18 each witness might bear to either side of the case,
19 and the manner in which each witness might be
20 affected by the verdict.

21 Take into consideration, as I said, the extent
22 to which, if at all, the witness is corroborated
23 or contradicted by either his or her own evidence
24 or other evidence in the case.

25 Evidence that at sometime prior to the time

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2 the witness took the witness stand he or she gave
3 statements or testified in a manner that is incon-
4 sistent with the witness's testimony before you,
5 is called impeaching evidence. We recognize that
6 normally an individual attempting to tell the
7 truth might very well retell it in a slightly dif-
8 ferent way from the first time. These normal varia-
9 tions may very well lend credibility to a statement.
10 However, where you find that a statement made by
11 a witness prior to the time he took the witness
12 stand is inconsistent with the testimony he or
13 she gives on the witness stand, you may decide
14 the extent to which, if any, that witness's
15 credibility is impeached.

16 Take into consideration the circumstances
17 under which the prior statement was made. You
18 determine whether that witness's testimony and
19 the extent, as I say, to which that testimony is
20 impeached.

21 Curtis King testified that he participated
22 in the crime charged. You have the right to suspect
23 the testimony of a participant in the crime charged
24 if you find that he has a personal stake in the
25 outcome of the trial or if you find that he believes

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2 that the rewards promised depend on the outcome of
3 the trial.

4 Curtis King is not incompetent to testify
5 because of his participation in the crime charged.
6 On the contrary, the testimony of a participant
7 alone, if believed by the jury to be true beyond a
8 reasonable doubt, may be of such weight as to
9 sustain a verdict of guilty even though not cor-
10 roborated or supported by other evidence in the
11 case.

12 (Continued on the next page.)

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CHARGE OF THE COURT

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2 THE COURT: (continuing) I do not pass on
3 whether or not there is corroborative evidence. The
4 jury, however should keep in mind that the testimony
5 of a participant is always to be received with
6 caution and weighed with great care.

7 You should never convict an accused on the
8 unsupported testimony of an alleged participant,
9 unless you believe such unsupported testimony to be
10 true beyond a reasonable doubt.

11 A defendant who wishes to testify is competent
12 as a witness. You must judge his testimony in the
13 same manner as any other witness. In this case, the
14 Government offered a statement signed by the defendant
15 Graham and a statement signed by the defendant Bell.
16 Evidence of any statement made after a crime has been
17 committed should always be considered with caution
18 and weighed with great care. All such evidence
19 should be disregarded entirely unless the evidence
20 in the case convinces the jury, beyond a reasonable
21 doubt that the statement was knowingly and intentionally
22 made.

23 A statement is knowingly and intentionally
24 made if the accused making it is aware what he is
25 making the statement and does it voluntarily and

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1 deliberately and intentionally and not because of
2 mistake or misunderstanding or other innocent reason.
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4 In determining whether the statements intro-
5 duced in this case were knowingly made the jury
6 should consider the age and intelligence and education
7 and occupation and the physical and mental condition
8 of the accused making the statement at the time the
9 statement was made.

10 Take into consideration the treatment of the
11 accused at the time that the statement was made, while
12 he was in custody and under interrogation as shown
13 by the evidence in the case. You determine whether
14 the defendant understood and knew and had been told
15 that he was not obligated or required to make any
16 statement, that if he made a statement it could be
17 used against him, that he was entitled to counsel
18 and that if he could not afford counsel, counsel would
19 be appointed for him. That in the event he decided
20 to answer questions at any time during the questioning
21 he could stop the questioning.

22 If the evidence in the case does not convince
23 you beyond a reasonable doubt that the statement made
24 by Mr. Graham and each one is under different circum-
25 stances, different times, and was not voluntarily and

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2 knowingly and intentionally made, you should disregard
3 it entirely.

4 Whether or not the statement is true is
5 immaterial. The first question you will reach in
6 considering this piece of evidence is whether it
7 was knowingly, voluntarily and intentionally made.
8 The same is true of the statement made by Mr. Bell.
9 If the evidence in the case does not convince you
10 beyond a reasonable doubt that the statement was
11 knowingly, voluntarily and intentionally made,
12 you should disregard that statement entirely.

13 On the other hand, if the evidence in the case
14 convinces you beyond a reasonable doubt that the
15 statement made in each case was voluntarily, knowingly
16 and intentionally made, you may consider it as
17 evidence in the case against the defendant who
18 voluntarily and intentionally made the statement.

19 If it appears from the evidence in the case
20 that the statement would not have been made but for
21 some threat of harm or some offer or promise of
22 immunity from prosecution or leniency in punishment
23 or other reward, such statement should not be considered
24 as having been voluntarily made because of the danger
25 that a person accused might be persuaded by the pressure

CHARGE OF THE COURT

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2 of hope or fear to confess as facts things which are
3 not true in an effort to avoid threatened harm or
4 punishment or to secure some promised reward.

5 If the evidence in the case leaves the jury
6 with a reasonable doubt as to whether a confession
7 was voluntarily made, then the jury should disregard
8 it entirely.

9 As I say, if on the other hand, the evidence
10 in the case shows beyond a reasonable doubt that the
11 statement was knowingly and voluntarily and intentional-
12 ly made, then you treat it as you would other evidence
13 in the case and as the statements deserve under all
14 the circumstances.

15 Mr. Curtis King has been convicted of a number
16 of felonies, that is crimes punishable by imprisonment
17 for a term of years. Prior conviction does not render
18 a witness incompetent to testify, and this of course
19 relates also to the defendant, Bell. It does not
20 render a witness incompetent to testify, but it is
21 merely a circumstance which you may consider in
22 determining the credibility of the witness.

23 Of course, it is solely up to the jury to
24 determine the effect, if any such prior conviction
25 has. If a witness is shown to have knowingly testified

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2 before you falsely under oath as to a material fact
3 and that false testimony was knowingly given, in
4 other words, you find that the witness knew that he
5 was testifying falsely, then you may disregard all
6 that witness' testimony on the ground that you may
7 find such witness' testimony is unworthy of belief.

8 On the other hand, you may if you wish consider
9 so much of that witness' testimony as you recognize
10 as being truthful. That principle underscores the
11 wide discretion the jury has in assessing the
12 creditiliby of witnesses.

13 We turn to the indictment. The indictment
14 is merely a method of bringing a defendant into
15 court to answer charges. The allegations of the counts
16 of the indictment are not to be considered by you as
17 proof. Proof comes through evidence, testimony of
18 the witnesses and the exhibits.

19 You are not to attach any significance to the
20 fact that the indictment is brought in the name of
21 the United States. Prosecution and defendants are
22 equals in this court. The obligations of the
23 prosecution and the rights of the defendnats are
24 not to be reduced because the prosecution is by the
25

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United States of America.

"Count 1 of the indictment charges as follows:
On or about and between the first day of January, 1976 and the 31st day of May, 1976, both days being approximate and inclusive, within the Eastern District of New York and elsewhere the defendants, Ronald Bell and Gary Graham together with Charles Williams, also known as Chaz, Robert McGray, also known as Sabu, Curtis King and Robert Hairston, named as co-conspirators, did knowingly and wilfully conspire to commit offenses in violation of Title 18 United States Code, Sections 2113(a) and (d) by conspiring to rob by force, violence and intimidation a series of banks within the Eastern District of New York and elsewhere, the deposits of which banks were insured by the Federal Deposit Insurance Corporation.

In furtherance of said conspiracy and to achieve the objectives thereof, the defendants, Ronald Bell and Gary Graham, together with co-conspirators Charles Williams, also known as Chaz, Robert McGray, also known as Sabu, Curtis King and Robert Hairston, committed the following overt acts:

One, in or about the later part of January, 1976 within the Eastern District of New York the

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defendants, Charles Williams, Robert McGray, also known as Sabu, and Curtis King has a series of meetings during which they discussed and rehearsed robbing banks.

Two, on or about February 9, 1976 the defendants Charles Williams also known as Chaz, Robert McGray also known as Sabu, Curtis King, Ronald Bell and Gary Graham robbed the European-American Bank located on Brush Hollow Road in Westbury, New York.

Three, on or about March 11, 1976 the defendants Charles Williams also known as Chaz, Robert McGray also known as Sabu, Curtis King and Robert Hairston robbed the Kilbourn State Bank located at 6055 West Lisbon Avenue, in Milwaukee, Wisconsin."

This is based on Section 371 of Title 18, which I will paraphrase because I did not bring the volume out which in effect says:

Where two or more persons conspire to commit an unlawful act and thereafter one of the conspirators knowingly commits an overt act the crime of conspiracy is committed. As I indicated, the crime of conspiracy is the crime of entering into an agreement or understanding of business to commit the unlawful act. It is not the commission of the unlawful act itself.

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2 A conspiracy is a combination of two or more
3 persons by concerted action to accomplish some unlawful
4 purpose. Conspiracy has been described as a kind
5 of partnership in criminal purposes in which each
6 member becomes the agent of every other member of the
7 conspiracy. The gist of the offense is the combination
8 or agreement to violate the law.

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CHARGE OF THE COURT

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2 THE COURT: (continued) In this case, the
3 charge is that the parties named got together to rob
4 banks. The mere similarity of conduct among individuals,
5 the fact that they associated, that they get together
6 and discuss common aims and interests does not necessar-
7 ily establish proof of the existence of the conspiracy.

8 In this case, the proof, if you credit it, and
9 I am not saying whether you should or not, the testi-
10 mony of Curtis King is that they actually got together
11 and said to each other, that they were getting together,
12 in effect, to rob banks. But the evidence need not
13 show that the parties got together and made any
14 express agreements to violate the law.

15 What the evidence must show, beyond a reasons-
16 ble doubt, in order to establish proof that a conspiracy
17 existed, is that the members in some way or manner,
18 or through some contrivance, positively or tacitly,
19 came to a mutual understanding to try to accomplish
20 the unlawful purpose charged.

21 Before the jury may find that a defendant or
22 any other person has become a member of the conspiracy,
23 the evidence must show that the conspiracy was formed
24 and that the defendant or other person who is claimed
25 to have been a member, knowingly and willfully

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1 participated in the unlawful plan, with the intent to
2 advance the purpose of the consipriacy. In other words,
3 in order for the Government to show that any member
4 entered into the conspiracy, it must show that that
5 party di^d so knowingly and willfully, was aware that
6 they were getting together for the purpose of robbing
7 banks. That applies to Charles Williams, Robert McGray,
8 Curtis King, Robert Hairston, as well as the accused.
9

10 Now, the Government does not have to prove
11 that each one of these parties named were members of
12 the conspiracy. It must prove that the accused, and if
13 it is only one accused, at least one other of those
14 named, were members of the conspiracy. You cannot have
15 a conspiracy of one. It has to be two or more. The
16 Government must prove that the participation was
17 knowing and voluntary. As I say, that they were aware
18 that they were in the business of robbing banks, and
19 the participation must be of the kind that helps
20 that purpose.

21 In determining whether the accused became a
22 member of the conspiracy, you must consider only that
23 evidence of the defendant's acts or statements. For
24 example, if Mr. Curtis King testified, and I do not
25 know whether he did or not, that he had a conversation

CHARGE OF THE COURT

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2 with Mr. Charles Williams, and one of the accused was
3 mentioned in that conversation, you cannot use that
4 kind of evidence to determine whether the accused
5 knowingly and willfully entered into the conspiracy.

6 Criminal liability is personal. The testimony
7 must be evidence of what the defendant or the accused
8 said or did.

9 Now, that principle may be slightly confusing
10 because I had charged you early in the trial that the
11 accused is bound by any statements made outside his
12 presence by one of the members of the conspiracy. If
13 the Government proves that the conspiracy existed at the
14 time and for the purposes set forth, two, that the
15 party speaking or performing the acts knowingly and
16 willfully became a member of the conspiracy, and if the
17 statement or the acts were during the term of the
18 conspiracy, and to effect the purposes of the conspiracy,
19 then the accused who you find knowingly and willfully
20 entered into the conspiracy, is chargeable with that
21 statement.

22 That principle that I gave you was a matter of
23 evidence. It directed you to the evidence, if the
24 Government proved all those facts. I told you to
25 disregard it if the Government did not. But when it

comes to determining whether the accused committed the crime, now we are talking about criminal liability, not how to deal with the evidence.

Now the Government must prove by what the defendant or the accused said or did, to determine whether he knowingly and wilfully entered into the conspiracy. In order for the Government to establish the crime in Count 1, the Government must prove beyond a reasonable doubt, first, that the conspiracy described in Count 1 was knowingly and wilfully formed and existing at the time alleged for the purpose alleged, to wit, to rob banks.

Second, that the accused knowingly and wilfully became a member of the conspiracy, and I told you the type of evidence that you may consider for that purpose. And, of course, if you find that the statements were knowingly, voluntarily and intentionally made, and you find that beyond a reasonable doubt, of course you may consider that as part of the evidence in the case.

Third, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time alleged.

And fourth, that such over act was committed in furtherance of the object or purpose of the conspiracy.

1
2 I think I should define an overt act. An overt
3 act is a significant step toward the accomplishment
4 of the purpose of the conspiracy. The Government does
5 not have to prove that the object of the conspiracy,
6 the robbing of the bank, was accomplished.

7 In this case, the indictment charges it was,
8 by the robbery of one or more banks, but the crime is
9 completed when the Government has established those
10 essential elements of the crime charged. The overt act
11 need not necessarily in and of itself be criminal in
12 nature. It could be the casing of the bank, after the
13 agreement is entered into.

14 The point is that it must be something that you
15 can see or hear, and that is a significant step toward
16 the accomplishment of the purposes or purpose of the
17 conspiracy. You are not to determine the guilt or
18 innocence of the accused on the degree of culpability.
19 The mere fact that you find that someone who is not
20 before the Court at the present time was more culpable,
21 guiltier, if I may use the term, is not part of the
22 consideration for you of this case.

23 Your determination is solely as to whether or
24 not the accused knowingly and wilfully entered into the
25 conspiracy. It is not whether the accused performed a

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minor or major role.

Now, we turn to the substantive counts. I indicated to you before that even though there are two substantive counts, it in effect charges a single crime. One is a graver and the other is a lesser offense. So I will read the graver offense first, because I will direct you to first decide whether the Government proved guilt beyond a reasonable doubt of the crime charged in Count 3.

Count 3 charges, "On or about the 9th day of February, 1976, within the Eastern District of New York, Ronald Bell and Gary Graham, together with Charles Williams, also known as Chaz, Robert McGray, also known as Sabu, and Curtis King, did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately \$23,350 in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of this act and offense," and I want you to pay particular attention to this last element, because

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that is what distinguishes the crime charged in Count 3 from the crime charged in Count 2. You will find when I read Count 2, that that element is not in Count 2. I will continue.

"The defendants Ronald Bell, Gary Graham, Charles Williams, also known as Chaz, Robert McGray, also known as Sabu, and Curtis King, did assault and place in jeopardy the lives of said bank employees, as well as the lives of other persons present, by the use of a dangerous weapon. In violation of Title 18, United States Code, Section 2113(d) and 2."

(continued on next page)

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2 Almost all the Federal Law, is codified, and
3 this is Title 18. It has various sections, and it is
4 entitled, Crimes and Criminal Procedure, and the
5 pertinent parts of 2113 is the following: You'll
6 notice some of the language from the statute finds its
7 way into the count because the charge is based
8 on what the statute says.

9 The Congress defines a crime, and the Congress
10 says if you do so-and-so it is a crime. That makes
11 it a crime. There is certain proscribed conduct.
12 The Congress says you shall not knowingly and willfully
13 and knowingly and willfully is what we call the
14 criminal intent, because generally crimes have two
15 main ingredients.

16 One is the proscribed conduct. Don't do this.
17 The other is criminal intent, knowingly and willfully.
18 Someone might commit the act that constitutes a crime
19 but it is not a crime if the party doesn't do it
20 intentionally or isn't aware that he is doing it, so
21 that is why you will find knowingly and willfully in
22 the language.

23 "Whoever by force and violence or by intimidation
24 takes from the person or presence of another
25 any property or money or anything of value belonging

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to or in the care, custody, control, management, or possession of any bank, commits a crime under 2113(a).

Now the crime charged in Count 3 is under sub-division(d), and sub-division D incorporates the elements of (a). It says, "Whoever in committing any offense defined in Sub-section A." which I just read to you, "assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device, commits the more serious crime," the graver crime.

Now the bank is defined under Sub-division (f) of 2113 as any banking institution insured by the Federal Deposit Insurance Corporation. That is what makes this a Federal crime, the fact that it is insured by the Federal Deposit Insurance Corporation. The parties here stipulated that the European-American Bank was insured by the Federal Deposit Insurance Corporation on February 9, 1976, at the time of the alleged offense. So that is out of the case. That is stipulated to, but in order to prove the crime charge in Count 2 of the indictment, the Government must prove beyond a reasonable doubt, first, the act or acts of taking from a person or in the presence of another, money belonging to or in the care, custody,

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2 control, management, and possession of, the European
3 American Bank at Brush Hollow Road in Westbury.

4 Two, the act or acts of taking such money by
5 force or violence or by means of intimidation.

6 Three, the act or acts of assaulting or putting
7 in jeopardy the life of any person by the use of a
8 dangerous weapon or device while engaged in stealing
9 such money from the European American Bank.

10 Fourth, the doing of such acts willfully.

11 Now this is the criminal intent. An act is
12 done willfully if done voluntarily and intentionally
13 and with specific intent to do something the law
14 forbids. To take by intimidation means willfully to
15 take by putting in fear of bodily harm, and here we
16 are talking about the fear that the bank's personnel
17 would have of bodily harm. Sufficient fear must arise
18 from the willful conduct of the accused, from some-
19 thing the accused did rather than from some mere
20 timidity of the victim.

21 The taking by intimidation must be established
22 by proof of something that the accused did or some
23 statement he made under circumstances that would pro-
24 duce in the ordinary person fear of bodily harm.

25 If the jury should find beyond a reasonable

doubt from the evidence in the case that the accused did willfully commit the robbery of the European American Bank as charged, then the jury must proceed to determine whether the evidence in the case establishes that the accused in committing the robbery of that bank assaulted or put in jeopardy the life of the employees of the bank as charged in the indictment.

Any willful attempt, or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, or any intentional display of force such as would give the victim reason to fear or suspect immediate bodily harm, constitutes an assault.

An assault may be committed without actually touching or striking or doing bodily injury to the person of another. So a person who has the apparent present ability to inflict bodily harm or injury on another person, and willfully attempts or even threatens to inflict such bodily harm as by intentionally flourishing or pointing a pistol or gun at another person, may be found to have assaulted such person.

To put in jeopardy the life of another person by the use of a dangerous weapon or device includes any weapon or device capable of being readily operated,

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2 manipulated, wielded, or otherwise used by one or
3 more persons to inflict severe bodily harm or injury
4 upon another person. So an operable pistol or shotgun
5 may be found to be a dangerous weapon or device.

6 To put in jeopardy the life of a person by the
7 use of a dangerous weapon or device means then to
8 expose such person to a risk of death by the use of
9 such dangerous weapon or device.

10 As I say, Count 3 charges the graver offense.

11 The third element of the crime charged in
12 Count 3, makes it the graver offense under Section
13 2113-D. If the jury finds the defendant guilty of the
14 charge in Count 3, do not consider Count 2 since the
15 graver charge includes the lesser charge.

16 If the jury should unanimously find the accused
17 not guilty of the crime charged in Count 3, then the
18 jury must proceed to determine the guilt or innocence
19 of the accused as to the lesser offense charged in
20 Count 2.

21 As I indicated to you, the crime of robbery of
22 a bank, accompanied by assault or putting in jeopardy
23 the life of others by the use of a dangerous weapon
24 or device, necessarily includes the lesser offense
25 of robbery of a bank without an assault or putting in

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jeopardy the life of another by the use of a dangerous weapon or device.

There is evidence in the case that Ronald Bell pleaded guilty to an unrelated armed robbery. Proof of the conviction of an unrelated bank robbery has a limited use.

The defendant is called upon to answer the charge in this indictment. No other charge. Then you might fairly ask why did the Court permit evidence of a prior armed bank robbery. The defendant denies that he was present in the bank. If there is other evidence in the case, aside from the prior bank conviction, that he was present, you may use evidence of the prior bank robbery if you find similarity between that robbery and the one charged here in order to identify, if the evidence indicates it, the defendant as a participant in the bank robbery charged here. If you don't think the evidence indicates that, disregard it.

It would be unfair to convict the defendant Bell for armed robbery in the charge of Count 3 or 2 merely because he was convicted once before. That is not the purpose of permitting it to come before you. The purpose is the very limited use, that I said you may put to evidence, of the prior bank robbery. You look at

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2 the similarities and dissimilarities, and you determine
3 whether it indicates to you any evidence that the de-
4 fendant Bell indeed was the participant. As I say,
5 there must be evidence in the case aside from the
6 prior bank robbery to start with. What I'm saying is,
7 if there isn't, then you would be convicting him for
8 this bank robbery because he had a prior bank robbery
9 conviction.

10 The charge in both cases, both counts, 3 and 2,
11 is that the bank robbers used force and violence or
12 intimidation, and under D, that they assaulted other
13 persons and placed in jeopardy the life of other persons.

14 The evidence in the case, if you credit the
15 evidence, is that the defendant Graham, never entered
16 the bank, never used force, violence or intimidation.
17 Never had a weapon. If you credit the evidence, the
18 role he played was the driver of the getaway car from
19 the bank. In a case where two or more persons are
20 charged with the commission of a crime, the guilt of
21 any defendant may be established without proof that he
22 did every act constituting the offense charged.

23 We call that a charge of aiding and abetting.

24 Section 2 of Title 18 says: "Whoever commits an
25 offense against the United States, or aids and abets,

Charge of the Court

counsels, commands, induces, or procures its commission, is punishable as a principal."

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with a criminal venture, and willfully participate in it as he would in something he wishes to bring about. That is to say that he willfully seeks, by some act or omission of his, to make the criminal venture succeed; and I charge you what willful means: It means that it is done knowingly. The party is aware, and the party does it deliberately and intentionally; and the willful act must be a willful participation in the scheme to help it succeed.

Now I hesitate a moment, as I do whenever an indictment contains both a conspiracy, and a charge of aiding and abetting. What I said about aiding and abetting sounds very much like what I said about conspiracy. It is difficult to draw the distinction except on a theoretical basis. I'll try to do it for you and I hope that it will be less puzzling to you.

As I indicated at the outset, the crime charged in conspiracy was the agreement and a significant step toward the accomplishment.

The difference between that and aiding and

1 abetting in the commission of a substantive offense
2 is that the Government must prove that the substantive
3 offense was committed before anyone may be convicted
4 of aiding and abetting the substantive offense. That
5 is not true in a conspiracy. The significant act that
6 I said, the overt act that the Government must prove
7 beyond a reasonable doubt, though it must be a signifi-
8 cant step, need not be the commission of a crime,
9 while in aiding and abetting, it does. I have that
10 difficulty in cases where the indictment charges a
11 conspiracy and the commission of a crime -- the
12 completed crime -- and aiding and abetting is the
13 commission of that crime.
14

15 I think that pretty well explains it. As I
16 say, I sometimes hesitate to charge it because it is
17 a difficult concept to get hold of, unless you under-
18 stand that one is the charge that they went into a
19 business. That they committed the crime is irrelevant.
20 On the other hand, in aiding and abetting, though it
21 may be substantially the same act, the Government must
22 prove that the crime was committed. You cannot have
23 aiding and abetting of just an understanding, just an
24 agreement.
25

You will shortly be excused to deliberate on

Charge of the Court

1
2 the matter. Each juror must decide the case for
3 himself and herself. You must do it through your own
4 mental processes. You must make the decision. It
5 would be improper for you to leave it to someone else
6 to decide the case for you. It is always improper
7 to take an intransigent and arbitrary view and refuse
8 to discuss the case.

9 The jury process is a deliberative process. It
10 is an exchange of ideas based on the evidence in the
11 case. If you have arrived at a tentative verdict, and
12 after discussion with your fellow jurors you decide
13 that what they're saying makes more sense than what
14 you originally thought, don't hesitate to change your
15 view if it's consistent with the evidence.

16 During your deliberations, you may have the
17 occasion to ask for some testimony. All your notes
18 will come through your foreman, and through the
19 marshal. If you want some testimony read, try to
20 identify the witness and the subject matter, if you
21 can. After I get your note I'll take it up with the
22 lawyers and then I'll start reading the testimony.
23 If you just ask for the testimony of a particular
24 witness, I'll start reading it from the first question
25 and when I am satisfied that all the jurors have
heard what they want to hear by a raise of the hands,

1
2 then I'll stop reading.

3 If you want any of the exhibits ask for them.
4 If you want all the exhibits, I'll send all the
5 exhibits in.

6 When you have arrived at a unanimous verdict,
7 you will send a note in and say, "We have a verdict."
8 Don't tell me what the verdict is. That is a matter
9 for the jury, until it's announced in public. If I
10 get the note that the verdict is unanimous, I'll call
11 you in and I'll say, in effect, in the case of the
12 United States of American against Ronald Bell and
13 Gary Graham, how do you find the defendant Ronald Bell
14 as to Count 1? And I'll get your verdict. How do you
15 find Ronald Bell as to Count 2 -- I'm sorry. It won't
16 be that way. I'll say: How do you find as to Ronald
17 Bell on Count 3? And if you say not guilty, I'll say
18 how do you find Ronald Bell as to Count 2? Guilty or
19 not guilty? And you will render a verdict. If you
20 announce that you find Ronald Bell guilty on Count 3,
21 I will not ask you how you find him, Ronald Bell, as to
22 Count 2.

23 After you have announced the verdict, the foreman
24 will sit down, I'll turn to Juror No. 2, and generally
25 ask whether you heard the verdict as rendered by the

1
2 foreman. If you say, yes, I'll say, do you agree?
3 Is that your verdict? And I want responses from
4 Juror No. 3, 4, until I get to 12.

5 If 12 verdicts are announced in open Court
6 and they are the same verdict, it then becomes the
7 verdict of the case. Not before. So don't tell me
8 during your deliberations that you stand 11 to 1,
9 or 10 to 2, or 6 to 6, 7 to 5, I'm not interested.
10 I'm interested when you announce that you have a
11 verdict.

12 Now, I can't think of anything else I want to
13 say to you at this point. I'll ask you to take leave
14 of the Court. Don't start your deliberations yet.
15 I'll call you back into the courtroom shortly. The
16 jury is excused.

17 (Jury stepping down from the witness box and
18 leaving the courtroom.)

19 THE COURT: I intend to have the jury deliberate
20 until about 6 o'clock. If they haven't arrived at a
21 verdict, I intend to suspend. Do you have any
22 exceptions or additions?

23 MR. CARTER: No, I have no exceptions or
24 additions.

25 MR. LEVY: Yes, your Honor.

1 THE COURT: I did not read Count 2. I
2 realized at the end, but I told them the only element
3 was the assault -- put in jeopardy the lives of other
4 persons. You want me to read Count 2?

5 MR. LEVY: No.

6 MR. ROSENKRANZ: No.

7 MR. CARTER: No, your Honor.

8 THE COURT: All right.

9 MR. LEVY: Your Honor, I respectfully except
10 to that portion of your Honor's charge where you per-
11 mitted the jury to use the prior conviction of Mr.
12 Bell as a prior similar act for the purpose of
13 establishing identity.

14 That is not a theory that Mr. Carter ever ad-
15 vanced and I don't think it is a proper element in the
16 case because of the fact that Mr. Bell completely
17 denies the participation, as I previously said.

18 THE COURT: Of course, Rule 404 of the Federal
19 Rules of Evidence specifically permits the intro-
20 duction of evidence of similar crimes to prove identity.

21 MR. LEVY: Your Honor, Mr. Carter did not
22 introduce that evidence on his --

23 THE COURT: I'm not bound by what he says.

24 MR. LEVY: Well, I made my exception.

25 THE COURT: Sure.

1 MR. LEVY: I respectfully request your Honor --

2 THE COURT: Incidentally, I think he did say,
3 affirmatively, that it may be offered to show identity.

4 MR. CARTER: I thought I did on summation.

5 THE COURT: I thought you did before then.
6 When we had the arguments.

7 MR. CARTER: During our argument I certainly did.
8 There is no doubt about that.

9 MR. LEVY: O.K.

10 I respectfully request your Honor to charge the
11 jury on the contents of Rule 5 of the Rules of Criminal
12 Procedure. Applying that rule toward the question of
13 a voluntariness of the Bell statements to leave it to
14 the jury to consider whether it was proper for Agent
15 Mahaffey to bring Bell to the United States Attorney's
16 office at all and question him there, because of
17 Rule 5, and if they find it not proper, it cannot be
18 said to be a voluntary statement.

19 THE COURT: As a matter of law?

20 MR. LEVY: No, as a matter of fact. As a
21 question of fact.

22 THE COURT: I think I will charge the jury that
23 Mahaffey may have had the obligation of bringing Bell
24 before Judge Bramwell without unnecessary delay.
25 That is the phrase in Rule 5. I'm not going to charge --

1 the arguments on McNabb-Mallory --

2 MR. CARTER: 3501-C overrules McNabb-Mallory
3 and says specifically under Section C that the fact
4 that a person is -- the fact of unnecessary delay,
5 even if there is unnecessary delay, is not itself
6 determinative of voluntariness.

7 MR. LEVY: I don't think 3501 pertains to an
8 indicted defendant.

9 THE COURT: It may not necessarily pertain to
10 voluntariness necessarily but isn't it a fact --
11 shouldn't they know he had the obligation of bringing
12 him before Judge Bramwell without unnecessary delay?
13 That is still Rule 5.

14 MR. CARTER: I don't believe it should be
15 phrased in that way.

16 THE COURT: How would you like to phrase it?

17 MR. CARTER: I think it should be phrased that
18 if you find -- you may consider unnecessary delay in
19 bringing Mr. Bell before the Court as bearing upon the
20 voluntariness of the statement.

21 MR. LEVY: Respectfully, I think that should be
22 added to what your Honor said he was going to charge
23 the first time, that they had an obligation to bring
24 him before Judge Bramwell, that they consider unnecessary
25 delay in bringing him before Judge Bramwell as bearing

1 on voluntariness.

2 THE COURT: No. I'll just charge them in the
3 form that I suggested. Anything else?

4 MR. LEVY: No, your Honor.

5 THE COURT: You, Mr. Rosenkranz?

6 MR. ROSENKRANZ: No additions and no exceptions.

7 THE COURT: All right, thank you.

8 Seat the jury.

9 MR. CARTER: The only other thing, before the
10 jury comes in, there are only 3 exhibits that I can
11 think of right now. The 2 statements and the book of
12 photographs. Can those be sent in in the first place
13 rather than having --

14 MR. ROSENKRANZ: No.

15 THE COURT: I never do that. I have more faith
16 in the jury than you have and if that is an issue,
17 they'll be asking for it. They'll be asking for it
18 by description, the statements.

19 Seat the jury.

20 MR. ROSENKRANZ: I have a lot of faith in juries.
21 I just don't want to help them any more than I have to.

22 THE COURT: Why not? It's a search for the
23 truth.

24 MR. ROSENKRANZ: I don't agree that it's a
25 search for the truth.

1 (Jury entering courtroom.)

2 THE COURT: I charge you that Special Agent
3 Mahaffey had the obligation of bringing the defendant
4 DELL before Judge Bramwell for arraignment without
5 unnecessary delay. That is the language.

6 At this point, I will excuse the alternates.
7 Will you please take whatever personal things you
8 have in the jury room. Only 12 jurors may deliberate
9 on the matter.

10 (Two alternates stepping down from the jury
11 box and leaving courtroom.)

12 THE COURT: Will the clerk please swear in the
13 marshals?

14 (Marshals being sworn by the Clerk of the Court.)

15 THE COURT: I call the jury's attention to the
16 oath that they took at the outset of the trial. That
17 was to render a true and just verdict and that means a
18 verdict based on the evidence, free of all bias, pre-
19 judice and sympathy, and in accordance with the laws
20 the Court charges.

21 The jury is excused for deliberations on the
22 matter.

23 (Jury stepping down from the jury box and
24 leaving courtroom to commence deliberations.)

25 THE COURT: I expect the lawyers will remain in

1 Court? At least for the next 15 minutes or so,
2 because that is when usually we get requests for
3 exhibits.

4 MR. ROSENKRANTZ: Certainly.

5 Can I approach the bench with Mr. Carter on
6 an unrelated matter?

7 THE COURT: Yes.

8 (Trial in recess while jury deliberates.)
9

10 (Continued next page.)
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(Time: 5:15 p.m.)

THE COURT: I have a note from the jury.
First, they want the signed statements taken by the
F.B.I. from Ronald Bell and Gary Graham.

Next --

THE CLERK: Court's Exhibit 1, for identifica-
tion.

THE COURT: Norvette McKenny's testimony to
show who she saw in the other car in Westbury parking
lot and on the highway.

THE CLERK: Marked Court's Exhibit 2.

MR. ROSENKRANTZ: You win some, you lose some.

THE COURT: Call the jury in.

(Jury enters courtroom, and is seated.)

THE COURT: One of your notes reads, Norvette
McKenny's testimony as to who she saw in the other
car in Westbury parking lot and on the highway.

I'll start with line 6 on 379. Direct examina-
tion by Mr. Carter.

(The Court reading the above indicated testi-
mony to the jury.)

THE COURT: From line 11, I go to 14.

(The Court continues reading.)

THE COURT: I'll suspend line 6 on page 380.

1 That is when I excused the jury. I didn't want you
2 to hear it the first time, I won't want you to hear it
3 now.

4 I continue on page 383, line 3. Continued
5 direct examination by Mr. Carter. I'm sorry. Strike
6 that. We'll start at line 8 on page 383.

7 (The Court reading.)

8 THE COURT: No, I'll correct that again.
9 On line 15. I'll suspend line 12, 386, and go to
10 line 17 on 386.

11 (The Court continues its reading.)

12 THE COURT: I think that is all you wanted to
13 know.

14 I suspended at line 9, 387.

15 Is there any cross examination on that?

16 MR. LEVY: I don't believe so, your Honor.

17 THE COURT: No?

18 Well, that is all the testimony I think you
19 want. And I'm directing the marshal to turn over to
20 you the two statements that you asked for.

21 The other note is signed statements taken by
22 the F.B.I. from Ronald Bell and Gary Graham.

23 The jury is excused for further deliberations
24 on the matter.

25 (The jury leaving courtroom.)

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MR. ROSENKRANTZ: Your Honor?

THE COURT: Yes?

MR. ROSENKRANTZ: I would object to the --
your Honor's reading of the -- what the witness testi-
fied she saw in Queens since the note only asked for
what had been seen in Long Island.

THE COURT: Well, it's difficult to find the
spot so I started there.

MR. ROSENKRANTZ: All right.

(The court in recess while jury deliberates.)

(At 5:15 court reconvened.)

THE COURT: I have another note. "If a person
is part of an armed robbery, even though he's not
carrying a gun, does he fall under charge three?"

That probably mean count three, the twentieth
thirteen B count.

I'm ready to charge that the Government must
prove that he was aiding and abetting a crime
involving a weapon, but that it is not necessary for
the Government to prove that he was carrying a gun.

Do you agree with that?

MR. ROSENKRANTZ: Yes.

MR. CARTER: Yes.

MR. LEVY: It's the law.

THE COURT: All right.

1 Bring them in.

2 Oh, yes, for the record, I'll put on the
3 record that the parties consented that the bank
4 pictures, the surveillance pictures went to the
5 jury, and it went in.

6 THE CLERK: The later note is marked Exhibit 4.

7 (Above described note marked by the Clerk of
8 the Court.)

9 THE COURT: The question is, if a person is
10 part of an armed robbery, even though he's not carry-
11 ing a gun, does he fall under charge three? That is
12 count three. That is the craver account.

13 It isn't necessary for the Government to prove
14 that the aided and abettor, and in this case of the
15 two accused we must refer to evidence against the
16 Defendant Graham. It isn't necessary for the Govern-
17 ment to prove Graham was carrying a weapon. The
18 Government must prove beyond a reasonable doubt that
19 he was aware that guns were being used in the
20 commission of the crime and that whatever his par-
21 ticipation was that aided and abetted in that crime,
22 helped accomplish that crime.

23 Does that clarify it?

24 (Continued on next page.)

25

All right, the jury is excused.

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(Jury leaving courtroom.)

THE COURT: If they don't come out in the next fifteen minutes, I'm going to suggest to them that they suspend, if they want, and continue tomorrow.

MR. LEWY: Fine.

THE COURT: I'll leave it with them, but that will be my suggestion.

(At 6:20 p.m. court session reconvening.)

THE COURT: I intend to call the jury out and ask them if they want to suspend at this point it's all right with me.

I'll also advise them if they reached a verdict as to any account against either defendant, they may report it if they wish.

MR. LEWY: All right.

MR. POSTKUBANSKY: All right.

(Jury re-entering courtroom.)

THE COURT: If you feel that you are unable to reach a verdict tonight, or in a reasonably short time, I'm ready to suspend if you wish that to be done, and to continue deliberations tomorrow.

Of course, if you arrived at a unanimous verdict as to any count either defendant, you may report that if you wish, but I'll leave that with

6
1 you. You can wait until you've reached a verdict on
2 all the charges or if you wish to report a verdict on
3 any one of the charges against either defendant you
4 may do that. But I think you ought to go back to the
5 jury room and write me a note and tell me if you wish
6 to continue or if you wish to suspend.

7 (Jury leaving courtroom.)

8 MR. BOSCHKE: Judge, I'm not sure if the
9 jurors think they can go home if they suspend. They
10 might have state court experience where if they
11 suspend, they don't go home.

12 MR. LEW: They might think that suspending
13 means to go to a hotel.

14 THE COURT: I don't know that we had any
15 state jurors here.

16 MR. BOSCHKE: I'm not sure either. Or they
17 may have seen movies.

18 THE COURT: One juror said she served before,
19 and one of the alternates, as I recall.

20 I'll clear it up, if there is a question about
21 it.

22 They turned the air conditioning off in the
23 building, and we're getting some fumes from the
24 repair of the roof through the air conditioning
25 system, and it may be a little uncomfortable in

7 1 there too.

2 I don't know whether it just cools the
3 courtroom. I know my chambers are pretty hot.

4 (Note handed to the Court.)

5 THE COURT: "Suspend and we'll continue
6 tomorrow on both defendants."

7 THE CLERK: That note is marked Court's
8 Exhibit 5.

9 THE COURT: All right, call them in. I want
10 everyone to remain in the courtroom after I excuse the
11 jury.

12 (Jury entering the courtroom and is seated.)

13 THE COURT: We'll suspend at this time, and
14 I'll ask you to return tomorrow at 9:30. Don't report
15 downstairs tomorrow. Come directly to the jury room
16 adjoining the courtroom. Your presence will be marked
17 by our deputy clerk.

18 Now, it goes without saying that it's very
19 important that you don't discuss this case with
20 anyone while you're in deliberations among your fellow
21 jurors. That means not even on the way to the
22 elevator home tonight. You may not discuss this case
23 unless all twelve jurors are present. So that tomorrow
24 when you arrive, some of you may arrive early. If
25 two or three or four or ten of you are together, you

1 may not discuss it. Wait until I call you into the
2 courtroom and find that all twelve jurors are here.
3 When I see all twelve are here, then I'll excuse you
4 and ask you to continue your deliberations. It is as
5 if there were no time period between your suspension
6 of deliberations in the jury room and the time when you
7 continue tomorrow. I want to make certain that there
8 are no outside influences.

9 You are the judges, as I told you. You must
10 decide this case on the evidence and in discussions
11 among yourselves and not with anyone else. So make it
12 particularly certain at this point in your delibera-
13 tions that you do not in any way discuss what you're
14 doing on this case. Not even your husband or wife,
15 your children, or anyone else. The answer is, "Please
16 wait, don't talk to me about the case, and when it's
17 all over, then I'm free to talk about it. Not until
18 then."

19 So try to come in promptly at 9:30. If you're
20 here a little early -- if you are all here early, you
21 can continue then.

22 So the jury is excused with that admonition.
23 Please understand that all twelve must get here
24 tomorrow, and that is always my concern when I suspend
25 a jury, and I know they're all going to their own

homes, for fear maybe one will not return, because ⁶⁴⁷ of
illness or for some other reason that you can't make
it.

So I'm going to order you not to take ill and
to maintain good health and get here tomorrow on
time.

The jury is excused.

(Jury stepping down from the jury box and
leaving courtroom.)

THE COURT: Will you please see to it that
everyone remains in the courtroom? That means every-
one, until at least five minutes have gone by, to
make certain that the jurors have gone down the
elevator and left the courthouse.

Tomorrow at 9:30. Please be prompt.

(Court in recess.)

* * * * *

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Ronald Bell		451		
Gary Graham	466	486		

* * *

1401
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

77 CR 157

-against-

RONALD A. BELL, et al.

FINDINGS OF FACT
AND CONCLUSIONS
OF LAW AND ORDER

Defendants.
----- X

APPEARANCES:

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BRAMWELL, D. J. 4

Defendant Ronald Bell moves this Court to suppress a statement made to agents of the Federal Bureau of Investigation on the 19th day of April.

This Court held an evidentiary hearing on June 21, 1977 to determine the facts underlying Mr. Bell's claim that his statement should be suppressed.

In light of the fact that this hearing was conducted on Tuesday, June 21, and that all counsel have a daily copy of the testimony at that hearing available, it is unnecessary for the Court to provide a lengthy recitation of the facts surrounding Mr. Bell's statement.

However, the Court will provide an enumeration of those facts which it finds determinative of the merits of the defendant's claim.

In reaching its findings of fact, the Court has fully credited the testimony of Agent Mahaffey, finding it totally credible. Furthermore, the Court finds that Mr. Bell's version of the underlying facts lacks credibility.

FINDINGS OF FACT

(1) Pursuant to a writ of habeas corpus ad prosequendum, defendant Bell was brought by United States Marshals from Rikers Island House of Detention for Men to the United States Court for the Eastern District of New York, arriving

at approximately 11:10 A. M. April 19, 1977. (Hearing Minutes, 6/21/77 at 120-121, 125-126 (Mahaffey); Hearing Minutes, 6/21/77 at 146 (Bell)).

(2) Mr. Bell met Agent Mahaffey of the Federal Bureau of Investigation there and the two proceeded to the office of Zachary Carter, Assistant United States Attorney. (Hearing Minutes, 6/21/77 at 113, 126 (Mahaffey)).

(3) Agent Mahaffey, Mr. Bell and Mr. Carter remained in Mr. Carter's office from approximately 11:10 A. M. to 11:20 A.M., at which time Mr. Carter left. (Hearing Minutes, 6/21/77 at 126-127 (Mahaffey)).

(4) Agent Mahaffey then advised Mr. Bell that an indictment had been handed up against him charging him with bank robbery. (Hearing Minutes, 6/21/77 at 114, 128-129 (Mahaffey)).

(5) Agent Mahaffey furnished the defendant with a copy of the indictment, reviewed the indictment thoroughly with the defendant, particularly those counts of the indictment involving the defendant. (Hearing Minutes, 6/21/77 at 114, 129 (Mahaffey)).

(6) Defendant Bell understood the nature of the charges against him as specified in the indictment. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

(7) Agent Mahaffey asked the defendant if he would like to talk about his involvement in the bank robbery which is charged in the instant indictment. (Hearing Minutes, 6/21/77 at 115, 629 (Mahaffey)).

(8) However, Agent Mahaffey stated that before defendant should discuss anything relating to the crime charged, the defendant should be made aware of certain constitutional rights. (Hearing Minutes, 6/21/77 at 129 (Mahaffey)).

(9) Defendant Bell was then orally advised of his Miranda rights. (Hearing Minutes, 6/21/77 at 114, 129, 134 (Mahaffey)).

(10) The defendant indicated that he understood the nature of those constitutional rights. (Hearing Minutes, 6/21/77 at 114, 129 (Mahaffey)).

(11) Mr. Bell was then given the FBI constitutional rights and waiver of rights form to read. The form reads as follows:

INTERROGATION; ADVICE OF RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you

during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed _____

Witness: _____

Witness: _____

Time: _____

(Hearing Minutes, 6/21/77 at 114-115, 129-130 (Mahaffey)).

(12) Defendant read the form and stated that he understood its contents. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

(13) Agent Mahaffey then asked defendant Bell if he wanted to make a statement and Mr. Bell indicated that

he did want to make a statement. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

(14) However, before taking the statement Agent Mahaffey asked the defendant to sign the FBI constitutional rights and waiver of rights form to indicate that the defendant knew what was presented on that form, and that he agreed to waive those rights mentioned in the form including his Sixth Amendment right to counsel. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

(15) Defendant then proceeded to sign the form. (Hearing Minutes, 6/21/77 at 115, 135 (Mahaffey)).

(16) Next, Agent Mahaffey explained to the defendant that after taking his statement they would review it word for word and that defendant would then be asked to sign the statement. Mr. Bell indicated that this procedure was agreeable to him. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

(17) Defendant Bell thereafter gave his statement in narrative form which was written down by Agent Mahaffey. (Hearing Minutes, 6/21/77 at 118 (Mahaffey)).

(18) During the course of the interview defendant Bell indicated to Agent Mahaffey that he was fearful for his safety and that he had had a run-in with a co-defendant, Charles Williams, on the morning of April 19th, 1977, prior to being taken to the United States Court House. (Hearing

Minutes, 6/21/77 at 117 (Mahaffey)).

(19) Defendant further indicated during the interview that he had had two other encounters with Charles Williams. (Hearing Minutes, 6/21/77 at 116-117 (Mahaffey)).

(20) Specifically, defendant Bell stated that at the earlier of these meetings between Mr. Williams and Mr. Bell, Mr. Williams had indicated that Curtis King also named in the indictment, was "talking" to the F.B.I. but that Mr. Bell would not worry since Mr. Williams's lawyer had indicated that they "can beat it, just be cool and everything will be fine." (Hearing Minutes, 6/21/77 at 117 (Mahaffey)).

(21) At the later meeting between Mr. Williams and Mr. Bell, a newspaper clipping was shown to Mr. Bell which reflected the arrest of a number of the defendants in this case. (Hearing Minutes, 6/21/77 at 117 (Mahaffey)). Mr. Bell further stated to Agent Mahaffey that after showing the newspaper clipping to Mr. Bell, Mr. Williams then stated "Just be cool, we are going to take care of Curtis [King] and his family." (Hearing Minutes, 6/21/77 at 117 (Mahaffey)).

(22) Agent Mahaffey asked defendant Bell the meaning of Mr. Williams statement. Defendant Bell stated, "Well, what I got from that was that [Mr. Williams] was going to have [Mr. King's] family taken care of by some of his friends on

the outside. (Hearing Minutes, 6/21/77 at 117 (Mahaffey)).

23. Mr. Bell then stated that he did not want this to happen to him. He was worried that if he talked and was sent back to the Rikers Island House of Detention for Men where Mr. Williams was also being detained, the same thing could happen to him. (Hearing Minutes, 6/21/77 at 117 (Mahaffey)).

24. Defendant's motivation for later disavowing the inculpatory statements made to Agent Mahaffey was predicated on his fear of reprisals from Charles Williams, and other defendant's in this case. (Hearing Minutes, 6/21/77 at 175 (Bell)).

25. As a result of these statements, special arrangements were made for Mr. Bell's safety. (Hearing Minutes, 6/21/77 at 118 (Mahaffey)).

26. After writing down Mr. Bell's statement, Bell read it, corrected any errors, initialed those portions of the statement where corrections had been made, and signed the statement relating to his involvement in the bank robbery charged in the indictment. (Hearing Minutes, 6/21/77 at 136 (Mahaffey)).

27. The interview ended at approximately 12:30 at which time he was brought before a District Court Judge for arraignment. (Hearing Minutes, 6/21/77 at 137-139 (Mahaffey)).

28. Mr. Bell was in full possession of his physical and mental capacities at the time of the execution of the waiver and the giving of his statement. There is no indication that Mr. Bell was either distraught, upset, weeping, out of control or in great need of help. (Hearing Minutes, 6/21/77 at 114-115 (Mahaffey)).

29. Mr. Bell has had prior exposure to the criminal justice system in that he was arrested at least once before. He personally recognized Agent Mahaffey. (Hearing Minutes, 6/21/77 at 113 (Mahaffey)). He also had prior exposure to the F.B.I. constitutional rights and waiver of rights form. (Hearing Minutes, 6/21/77 at 115 (Mahaffey)).

30. Mr. Bell was not subject to any compulsion or coercion when he made the statement and signed the F.B.I. constitutional rights and waiver of rights form. (Hearing Minutes, 6/21/77 at 114-115 (Mahaffey)).

31. Defendant Bell was not subject to threats or abuse nor was he tricked by any agent of the United States nor were any promises made to him by any agent of the United States to induce him to sign the F.B.I. constitutional rights and waiver of rights form. It was only mentioned to Bell that any cooperation afforded to the Government would, in all likelihood, be made known to the Court by Mr. Carter. (Hearing Minutes, 6/21/77 at 142-142a (Mahaffey)).

CONCLUSIONS OF LAW

At the outset, the Court notes that defendant Bell's original attorney, Mr. Henderson, contended that defendant's post-indictment statement should be suppressed on the ground that it was the product of unnecessary delay in defendant's arraignment, in violation of Rule 5(a) of the Federal Rules of Criminal Procedure. Mr. Levy, who was substituted for Mr. Henderson at the defendant's request, ^{1/} specifically rejected that position. The Court, in the interest of justice, will nonetheless address itself to that question. ^{2/}

Defendant's "unnecessary delay" argument was predicated on the Supreme Court's decisions in McNabb v. United States, 318 U.S. 332 (1943), and Mallery v. United States, 354 U.S. 449 (1957), which indicated that statements obtained from a defendant during an "unnecessary" delay in his arraignment were inadmissible at any later trial. However, the McNabb-Mallory Rule was altered by the passage of 18 U.S.C. §3501. ^{3/} In United States v. Collins, 462 F.2d 792 (2d Cir. 1972), the Court found that section 3501 appears, "to have modified the McNabb-Mallory rule that unnecessary delay in arraignment is sufficient in and of itself to require exclusion of a confession. Rather the Congressional test would seem to be the voluntariness of a confession under all the circumstances."

Id. at 796. Moreover, section 3501(c) specifically provides that a confession obtained while an individual is under arrest or detention" shall not be inadmissible solely because of delay in bringing such person before a magistrate . . . [so long as] such confession was made or given . . . within six hours immediately following his arrest or other detention." (emphasis supplied). As such, a voluntary confession made within six hours of arrest or detention is admissible without reference to delay. United States v. Halbert, 436 F.2d 1226 (9th Cir. 1970). Otherwise, any delay between arrest and confession, like the delay between arrest and arraignment, is but an additional factor to be used by the trial judge in determining voluntariness and is not alone determinative. United States v. Keeble, 459 F.2d 757 (8th Cir. 1972), rev'd. on other grounds, 412 U.S. 205 (1973); United States v. Marrero, 450 F.2d 373 (2d Cir. 1971), cert. denied, 405 U.S. 933 (1972). In addition, the Second Circuit has held that a brief detention immediately prior to appearance before the court to allow for the customary questioning by an Assistant United States Attorney does not constitute unnecessary delay. See United States v. Ortega, 471 F.2d 1350 (2d Cir. 1972), cert. denied, 411 U.S. 948 (1973); United States v. Marrero, supra; United States v. Ladson, 294 F.2d 535 (2d Cir. 1961), cert. denied 369 U.S. 824 (1962). Similarly, a delay in order

to reduce the defendant's oral statement to writing is considered reasonable. United States v. Curry, 358 F.2d 904 (2d Cir. 1965), cert. denied, 385 U.S. 873 (1966).

As the authorities above indicate, delay between detention and arraignment does not alone warrant holding a confession obtained during that period inadmissible. Thus, the interval between defendant Bell's transfer to federal custody at approximately 10:30 A.M. and his arraignment at approximately 12:30 P.M. during which time the confession was taken does not, by itself, preclude its admissibility^{4/}. Rather as the Court in Collins, supra, stated it is only one of the factors to be considered in determining whether a confession has been knowingly, voluntarily and intelligently made.^{5/}

As previously stated in this Court's opinion in United States v. Graham, 77 CR 157, the Government has a heavy burden of establishing a knowing, voluntary and intelligent waiver of a defendant's Sixth Amendment right to counsel in a post-indictment situation. However, as there noted, this burden is not insurmountable. As also stated in Graham, the Government must establish a knowing, voluntary and intelligent waiver of a defendant's Fifth Amendment right to be free from self-incrimination. The Court's determination on both these issues can only come after careful consideration of the factual transactions which occurred at the time in question.

Applying the facts of this case to the applicable standard as set forth in Graham, supra, this Court makes the following conclusions of law. Defendant Bell is an adequately educated, intelligent and articulate person with prior exposure to the criminal justice system. The signing of the F.B.I. waiver and the giving of his statement were the product of a rational and uncoerced mind, fully cognizant of the nature of the charges against him, the scope of his constitutional rights and the consequences of a waiver and making of an inculpatory statement. Further, the defendant was composed, in control of his physical and mental capacities, and alert, at the time in question. His signing of the waiver clearly manifested a knowing, voluntary and intelligent waiver of his Fifth Amendment right not to have to incriminate himself.^{6/} Additionally, in order to secure for himself the benefits of cooperation, namely that his cooperation would be communicated to the Assistant U. S. Attorney and to the Court, the defendant gave a willful and voluntary statement. This willingness clearly demonstrates that defendant possessed an understanding awareness and ability to protect his own interests when dealing with the federal government. It is manifest that this was not at all the situation confronted by the Court in United States v. Satterfield, Slip op. 505, decided 12/7/76, where the defendant was "an individual distraught, upset, weeping

and obviously out of control at the initial questioning, still in great need of help at the later interview." Id. at 808.

Furthermore, Mr. Bell had been informed that an indictment had been handed up against him and was fully apprised of its contents and the nature of the charges against him. He understood exactly what was at stake as well as the consequences of his actions. It is clear that Bell's waiver of his right to counsel at the time his statement was made fully comports with the requirements set forth in the case law of this Circuit and the holdings of the Supreme Court governing a constitutionally permissible and effective waiver of the right to counsel, in that it was a knowing, voluntary, and intelligent waiver of the right to counsel.

Additionally, the statement made by Mr. Bell was knowingly, voluntarily, and intelligently made, and clearly meets the requirements of the Fifth Amendment as well as the higher Sixth Amendment standard.

Accordingly, for all of the above stated reasons, defendant Bell's motion to suppress his statement of April 19, 1977 is, in all respects, denied.

It is SO ORDERED.

Dated: Brooklyn, New York
July 31, 1977

Henry Bramwell
U. S. D. J.

FOOTNOTES

1/ The Court inquired of Mr. Levy on several occasions whether he had had adequate and ample time to review the record, prepare memoranda of law, and make oral arguments on the motion to suppress. The Court also inquired whether Mr. Levy would like to reopen defendant Bell's suppression hearing, to bring on additional witnesses or to further examine witnesses who had already testified. Mr. Levy indicated for the record that he had more than ample time to prepare and that he was satisfied with the hearing record.

2/ While there is some question as to whether Rule 5(a), applies at all to the facts before the Court, see Miller v. United States, 396 F.2d 492 (8th Cir.), cert. denied, 393 U.S. 1031 (1969), the Court, for the purpose of this decision, will assume its applicability and will address itself to the larger issues involved.

3/ 18 U.S.C. §3501 provides, inter alia, that a confession shall be admissible in evidence if the trial judge finds that it was voluntarily given. Section 3501(b) provides that the trial judge, in determining voluntariness, shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time between arrest and arraignment; (2) whether the defendant knew the nature

of the offense charged; (3) whether the defendant knew or was advised of his right to remain silent and of his right to counsel, and (5) whether counsel assisted the defendant during questioning. The section explicitly provides that the presence or absence of any of the foregoing factors need not be conclusive on the issue of voluntariness. 18 U.S.C. §3601(b).

4/ The time parameters are determined by Federal detention, not by previous state incarceration. United States v. Davis, 459 F.2d 167, 170 (6th Cir. 1972).

5/ Defendant's contention that the circumstances under which he was brought before this Court for arraignment established, as a matter of law, an absolute bar against questioning by Federal Agents and the taking of a statement is wholly contrary to the overwhelming weight of authority. See United States v. Ortega, supra; United States v. Ladson, supra, United States v. Curry, supra.

6/ While the Miranda warning given defendant Bell may not have been stated with technical precision, this alone does not require the Court to hold defendant's waiver insufficient. Agent Mahaffey's words conveyed the substance of the warning. Moreover, defendant Bell read the F.B.I. constitutional rights and waiver of rights form and stated that he understood all its contents. This clearly meets the

requirements of Miranda. See United States v. Diggs, 497 F.2d 391, 392 n.1 (2d Cir. 1974); United States v. Floyd, 496 F.2d 982 (2d Cir. 1974).

UNITED STATES AT

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OF NEW YORK
Joseph A. Hendricks